

**RESOLUTION**  
**(22-2014)**

**A RESOLUTION OF THE FAIRVIEW CITY COUNCIL AUTHORIZING THE CITY ADMINISTRATOR TO ENTER INTO A PUBLIC IMPROVEMENT CONTRACT FOR CONSTRUCTION OF THE MAIN STREET SIDEWALK IMPROVEMENTS PHASE 5.**

**WHEREAS**, the City Council adopted the Transportation System Plan in 1999 and that plan includes a Sidewalk Master Plan, and

**WHEREAS**, the City Council adopted the Renaissance Plan in 1997 and that plan describes the need for pedestrian pathways in the Historic Fairview area, and

**WHEREAS**, the City Council developed the Visioning Document 2022 and that plan lists needed improvements to pedestrian and bicycle safety and links to school and services in the Historic Fairview area, and

**WHEREAS**, the Main Street Sidewalk Improvement project is consistent with the Sidewalk Master Plan, Renaissance Plan and Visioning Document 2022; and

**WHEREAS**, the City applied for and received a Community Development Block Grant for the Main Street Sidewalk Improvements Phase 5, and

**WHEREAS**, the City competitively bid the Main Street Sidewalk Improvements Phase 5 consistent with the City of Fairview Public Contracting Rules; and

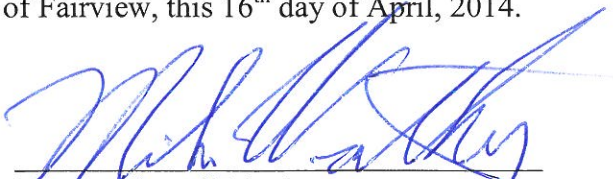
**WHEREAS**, Oregon Underground, Inc. is the lowest responsible bidder with a bid of \$203,172.40, based on the unit costs of the anticipated quantities for the project.

**NOW, THEREFORE, BE IT RESOLVED BY THE FAIRVIEW CITY COUNCIL AS FOLLOWS:**

**Section 1.** The Fairview City Council hereby authorizes the City Administrator to enter into a contract with Oregon Underground, Inc. for the Main Street Sidewalks Improvements Phase 5 in the amount of \$ 203,172.40 on behalf of the City of Fairview substantially in the form attached hereto as Exhibit A.


**Section 2.** This resolution is and shall be effective from and after its passage by the City Council.

Resolution adopted by the City Council of the City of Fairview, this 16<sup>th</sup> day of April, 2014.

  
\_\_\_\_\_  
Mayor, City of Fairview  
Mike Weatherby

April 18, 2014  
\_\_\_\_\_  
Date of Signing

ATTEST:

  
\_\_\_\_\_  
Recorder, City of Fairview  
Devree Leymaster

## AGREEMENT

This Agreement is dated as of the 17th day of April in the year 2014 by and between: CITY OF FAIRVIEW (here-in-after called Owner) and

Oregon Underground, Inc.  
(here-in-after called Contractor)

Owner and Contractor, in consideration of the mutual covenants here-in-after set forth, agree as follows:

### ARTICLE 1 - WORK

1.01 Contractor hereby agrees to furnish all labor, materials, equipment and supplies for the construction of the project entitled:

#### **CITY OF FAIRVIEW - Main Street Improvements 2014**

The project generally consists of improvements to approximately 500 lineal feet of Main Street between SE 223<sup>rd</sup> Avenue and Second Street and approximately 400 lineal feet of First Street between Main and Cedar Street, including curb and sidewalk, drainage and rain garden improvements, AC surface restoration and pavement overlay, in the City of Fairview, Oregon.

### ARTICLE 2 - Engineer

2.01 The Project has been designed by ALL COUNTY SURVEYORS & PLANNERS, INC., who is here-in-after called Engineer and who will assume all duties and responsibilities and will have the rights and authority assigned to Engineer in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

### ARTICLE 3 - CONTRACT TIME

3.01 The Work shall be substantially complete by June 20, 2014.

3.02 Liquidated Damages: Owner and Contractor recognize that time is of the essence in this Agreement and that Owner will suffer financial loss if the Work is not substantially complete within the time specified in Article 3.01.

3.03 In the event the successful bidder fails to achieve substantial completion or final completion within the time limits specified in the contract documents, liquidated damages shall be paid to Owner. Liquidated damages shall be paid in the amount of \$500 per day, based on loss of use if the project is not complete within the time specified in Article 3.01, with such extensions of time as are provided for in the General Conditions.

### ARTICLE 4 - CONTRACT PRICE

4.01 Owner shall pay Contractor for performance of the Work the amounts determined for the total number of each of the units of work in the bid schedule completed at the unit price stated. The number of units contained in this schedule is approximate only, and the final payment will be made for the actual number of units that are incorporated in, or made necessary by the Work covered by the Contract.

## ARTICLE 5 - PROGRESS PAYMENT PROCEDURES

5.01 On no later than the 4th day of every month, the Contractor shall prepare and submit to the Engineer a progress payment estimate filled out and signed by the Contractor covering the total quantities under each item of work that have been completed from the start of the job up to and including the last day of the preceding month, and the value of the work completed with such supporting evidence as required by the Owner and/or Engineer. This estimate shall also include an allowance for the cost of such materials and equipment required in the permanent work as has been delivered to the site and suitably protected but not as yet incorporated in the work.

5.02 The Engineer will, within 5 days, after receipt of each progress payment estimate, either indicate in writing the approval of payment and present the progress payment estimate to the Owner or return the progress payment estimate to the Contractor indicating in writing the reasons for refusing to approve payment. In the latter case, the Contractor may make the necessary corrections and resubmit the progress payment estimate.

5.03 On or about the 25th day of each month, the Owner will, after deducting previous payments made, pay to the Contractor 95% of the amount of the estimate as approved by the Engineer. The 5% retained percentage will be held by the Owner until the final completion of all work under the Contract.

5.04 Progress payments shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

## ARTICLE 6 - FINAL PAYMENT

6.01 The Contractor shall notify the Engineer in writing when the work is considered complete and ready for final inspection and acceptance. Within 15 work days after receiving the notice, either accept the work or notify the Contractor of work yet to be performed. If the work is accepted, the Engineer shall notify the Contractor and will make a final estimate and recommend acceptance of the work as of a certain date. Upon approval and acceptance by the Owner, the Contractor will be paid a total payment equal to the amount due under the contract including all retainage.

6.02 Prior to final payment the Contractor shall deliver to the Owner a receipt for all amounts paid or payable to the Contractor and a release and waiver of all claims against the Owner arising from or connected with the contract and shall submit evidence satisfactory to the Engineer that all amounts due for labor, materials and all other obligations connected with the work have been fully and finally settled, or are fully covered by insurance.

6.03 The acceptance by the Contractor of the final payment shall release the Owner and the Engineer from all claims and liability to the Contractor for all things done or furnished in connection with the work, and for every act of the Owner and others relating to or arising out of the work.

## ARTICLE 7 - INTEREST

7.01 All moneys not paid when due hereunder shall bear interest at the maximum rate allowed by law at the place of the Project, when requested in accordance with ORS 279.

## ARTICLE 8 - CONTRACTOR'S REPRESENTATIONS

In order to induce Owner to enter into this Agreement, Contractor makes the following representations:

8.01 Contractor has familiarized himself with the nature and extent of the Contract Documents, Work, locality, and with all local conditions, and federal, state, and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the Work.

8.02 Contractor has studied all reports of investigations and tests of subsurface and latent physical conditions at the site or otherwise affecting cost, progress or performance of the Work which were relied upon by Engineer in the preparation of the Drawings and Specifications.

8.03 Contractor has made or caused to be made examinations, investigations and tests and studies of such reports and related data in addition to those referred to in paragraph 8.2 as he deems necessary for the performance of the Work at the Contract Price, within the Contract Time, and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, tests, reports or similar data are or will be required by Contractor for such purposes.

8.04 Contractor has correlated the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Documents.

8.05 Contractor has given Engineer written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by Engineer is acceptable to Contractor.

#### ARTICLE 9 - MEDIATION

9.01 Should any dispute arise between the parties to this Agreement, it is agreed that such dispute will be submitted to a mediator prior to any litigation, and the parties hereby expressly agree that no claim or dispute arising under the terms of this Agreement shall be resolved other than first through mediation and, only in the event that such mediation efforts fail, through litigation.

9.02 The parties shall exercise good faith efforts to select a mediator who shall be compensated equally by both parties. Mediation will be conducted in Portland, Oregon unless both parties agree in writing otherwise. Both parties agree to exercise good faith efforts to resolve disputes covered by this section through this mediation process. If a party requests mediation and the other party fails to respond within ten (10) days, or if the parties fail to agree on a mediator within ten (10) days, a mediator shall be appointed by the presiding judge of the Multnomah County Circuit Court upon the request of either party. The parties shall have any rights at law or in equity with respect to any dispute not covered by this section.

## ARTICLE 10 - CONTRACT DOCUMENTS

10.01 Contractor will comply with all provisions set forth in the Contract Documents as if fully set forth herein.

10.02 The term "Contract Documents" means and includes the following:

Invitation to Bid	Payment Bond
Information for Bidders	Performance Bond
Instructions to Bidders	Notice of Award
Bid Proposal Form	Notice to Proceed
Non-Collusion Affidavit	Change Order
Prevailing Wage Certification	General Conditions
Resident Bidder Status	City of Fairview – Standard General Conditions
Asbestos Certification	State Wage Rates
Statement of Drug Testing Program	Special Provisions
First Tier Subcontractor Disclosure Form	Contract Drawings prepared or issued by All County Surveyors & Planners, Inc., dated March 2014
Qualification of Bidder	City of Fairview Standard Details
Bid Bond	Addendum: No. <u>1</u> , dated <u>April 7, 2014</u>
Agreement	Addendum: No. <u>      </u> , dated <u>                                </u>
	Addendum: No. <u>      </u> , dated <u>                                </u>
	All items included within these Contract Documents.

## ARTICLE 11 - MISCELLANEOUS

11.01 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party thereto without the written consent of the party sought to be bound; and specifically without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

11.02 Owner and Contractor each binds himself, his partners, successors, assigns and legal representatives to the other party hereto, his partners, successors, assigns and legal representatives; in respect to all covenants, agreements and obligations contained in the Contract Documents.

IN WITNESS WHEREOF, the parties hereto have signed two copies of this Agreement.

This Agreement will be effective on April 17th , 2014.

Owner: City of Fairview  
1300 NE Village Street  
Fairview, Oregon 97024

Contractor: **Oregon Underground, Inc.**  
**PO Box 777**  
**Clackamas, OR 97015**

By:

By:

Address for giving Notices: **PO Box 777**  
**Clackamas, OR 97015**